PROGRAMMATIC AGREEMENT
BETWEEN
THE NATURE CONSERVANCY AND THE NATURAL RESOURCES CONSERVATION SERVICE AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE
REGARDING EMIQUON PROJECT, FULTON COUNTY, ILLINOIS

WHEREAS, in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, the U.S. Department of Agriculture Natural Resources Conservation Service (AGENCY) proposes to enroll a portion of The Nature Conservancy's (Applicant) Emiquon Project, Fulton County, in its Wetland Reserve Program for floodplain restoration (see Attachment 1 for the Emiquon Project Area); and

WHEREAS, the AGENCY has determined that the proposed project's area of potential effects, as defined in 36 CFR 800.2c, includes numerous cultural resources (see Attachment 2 for recorded cultural sites); and

WHEREAS, the AGENCY has determined that the floodplain restoration may have an adverse effect on any historic property which is considered eligible for inclusion in the National Register of Historic Places and that is located within the Emiquon Project Area (see Attachment 3 for proposed restoration areas; see Attachment 4 for timetable of proposed activities); and

WHEREAS, systematic subsurface cultural resource identification and evaluation of recorded cultural sites has not been conducted by qualified, professional archaeologists within the area of potential effects; and

WHEREAS, the AGENCY has consulted with the Illinois State Historic Preservation Officer (SHPO) in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. Section 470 (NHPA), and its implementing regulations (36 CFR Part 800) to resolve the adverse effects of the historic properties that may be present in the area of potential effects; and

WHEREAS, AGENCY and SHPO have also invited the Applicant and the Rock Island Army Corps of Engineers (RICOE) and the Advisory Council for Historic Preservation (ACHP) to participate in the consultation and to concur in this Programmatic Agreement (PA); and

WHEREAS, the Applicant has participated in this consultation and has agreed to be a concurring party in the Programmatic Agreement; and

WHEREAS, the RICOE has participated in this consultation and has agreed to be a concurring party in the Programmatic Agreement; and

WHEREAS, no standing structures exist within the area of potential effects that may be eligible for the National Register of Historic Places; and

WHEREAS, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined

in the Native American Graves Protection and Repatriation Act (25 USC 3001-13 [PL 101-601]) are expected to be encountered in archaeological investigations within the area of potential effects;

NOW, THEREFORE, the AGENCY and the SHPO agree that upon the AGENCY's decision to proceed with the Wetland Reserve Program restoration project, the AGENCY shall ensure that the following stipulations are implemented in order to take into account the adverse effects of the floodplain restoration of the project area to the historic properties that are located within the area of potential effect.

Stipulations

AGENCY will ensure that the following measures are carried out.

I. IDENTIFICATION AND EVALUATION OF ARCHAEOLOGICAL RESOURCES

A. The Applicant and SHPO shall consult throughout the cultural resource investigation process outlined in these stipulations to ensure that all archaeological investigations are performed to adequately take into account Applicant's project construction phasing.

B. Prior to the commencement of any ground disturbance or construction activities within the boundaries of the Emiquon Project, the Applicant shall complete a Phase I archaeological survey consistent with and approved by SHPO and AGENCY.

C. If burials are discovered during the investigations covered by this Programmatic Agreement, required notifications (20 ILCS 3440, 17 IAC 4170) of the discovery will be made to the county coroner, then following authorization under the Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170) and its Rules, it and any associated burial artifacts will be removed following procedures for recordation and reporting that are similar to those established under the Act. No excavation of human remains will be performed except under the direction of a Certified Skeletal Analyst (17 IAC 4170.300(f)). Disposition of human remains and burial artifacts will be accomplished as determined under the provisions of the Act and its Rules.

D. AGENCY shall ensure that an archaeological reconnaissance survey (Phase I) will be performed for the project area, including a geo-morphological subsurface survey to determine potential for buried cultural sites. The Phase I survey shall be conducted in consultation with the SHPO in coordination with the project construction schedule, and a report of the survey shall be submitted to the SHPO for review and comment. Upon acceptance of the Phase I report SHPO shall issue written notification of clearance for construction activities on those parts of the surveyed area where no archaeological sites were discovered. SHPO shall review and comment on the Phase I survey within 30 days of receipt.

E. An archaeological evaluation (Phase II) will be performed at all archaeological properties determined to be potentially eligible by the SHPO and the AGENCY to evaluate their National Register eligibility. Phase II methodologies shall be formulated in consultation with the Illinois SHPO. A report of the Phase II findings shall be submitted to the SHPO for review and comment. SHPO shall review and comment on the Phase II survey within 30 days of receipt.

F. The Phase I and Phase II surveys will be conducted in a manner consistent with the approaches of the Secretary of the Interior's Standards and Guidelines for Identification (48FR 44720-23) and taking into account the National Park Service publication The Archaeological Survey: Methods and Uses (1978) and the Illinois State Historic Preservation Office Guidelines for Archaeological Reconnaissance Surveys/Reports. The Phase I and Phase II surveys will be implemented by the Applicant and monitored by the AGENCY.

G. AGENCY shall evaluate properties identified through the Phase II intensive survey against the National Register criteria (36 CFR part 60.4). SHPO, RICOE, ACHP and the Applicant shall be notified of the results of this review within 30 days of receipt by the AGENCY of the Phase II survey.

H. For those properties which the AGENCY and the SHPO agree are not eligible for inclusion in the National Register, no further archaeological investigations will be required, and the proposed project may proceed in those areas. Those properties identified in the survey, and agreed upon by AGENCY and the SHPO to be eligible for the National Register shall be treated in accordance with Stipulation II below.

II. ARCHAEOLOGICAL MITIGATION (Phase III)

A. Those sites which AGENCY and the SHPO agree are considered eligible for listing on the National Register of Historic Places shall be treated in the following manner:

1. The Applicant shall consult with SHPO regarding development of a plan for avoidance of the historic property by means of a preservation covenant (Appendix B).

2. If, after consultation with SHPO, SHPO and the Applicant agree that avoidance is not feasible, Applicant shall do a Phase III investigation in accordance with a Data Recovery Plan that is approved by SHPO.

3. AGENCY shall ensure that a data recovery plan addressing substantive research questions is developed in consultation with the Illinois SHPO for the recovery of relevant archaeological data. The plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties. It shall specify, at a minimum, the following:

-the property or portion thereof where data recovery is to be carried out;
-the research questions to be addressed through the data recovery, with an explanation of their relevance and importance;
-the methods to be used, with an explanation of their relevance to the research questions;
-proposed methods of disseminating results of the work in the interest of the public; and
-a proposed schedule for the submission of reports to the SHPO.

4. The data recovery plan shall be submitted by the Applicant to the SHPO for thirty (30) days review and comment. After receipt of the SHPO's comments, the Applicant shall

ensure that the data recovery plan is implemented. The SHPO shall monitor this implementation.

B. APPLICANT shall ensure that the data recovery plan is carried out by or under the direct supervision of an archaeologist who meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48FR 44738k-9).

C. APPLICANT shall ensure that adequate laboratory time and space are available for analysis of osteological, cultural, and biological materials recovered from the excavations.

D. APPLICANT shall submit a written Annual Progress Report to SHPO, AGENCY and RICOE by February 1st every year until the parties agree that the terms of this PA are fulfilled.

E. APPLICANT shall ensure that an adequate program of site security from vandalism during data recovery is developed in consultation with the Illinois SHPO and implemented.

III. CURATION AND DISSEMINATION OF INFORMATION

A. In consultation with the SHPO, AGENCY shall ensure that all materials and records resulting from archaeological survey and data recovery conducted for the project are curated at a repository within the State of Illinois and in accordance with 36 CFR Part 79. If human remains are recovered, the signatories to this Agreement shall proceed according to stipulation I(c) to determine the appropriate disposition of the remains.

B. AGENCY shall ensure that all final archaeological reports resulting from actions pursuant to this agreement will be provided in a format acceptable to the SHPO and the National Park Service for possible peer review and submission to the National Technical Information Service (NTIS). The agency official shall ensure that all such reports are responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize archaeological data.

IV. ROCK ISLAND DISTRICT CORPS OF ENGINEERS ASSURANCES

A. Issuance of any required Department of the Army permit(s) is/are withheld until this PA has been signed by all parties.

B. Require this PA be implemented as a special condition of any required Department of the Army permit(s) for projects covered by this PA.

V. DISPUTE RESOLUTION

Disputes regarding the completion of the terms of this Programmatic Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any of the signatories may request the participation of the Advisory Council on Historic Preservation to assist in resolving the dispute, but the parties shall not be bound by the decision of said Advisory Council.

VI. MODIFICATION OR TERMINATION

Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

Execution of this Progammatic Agreement by AGENCY and the SHPO, and implementation of its terms, shall constitute evidence that AGENCY has taken into account the effects of the undertaking on historic properties as required by Section 106 of the National Historic Preservation Act of 1966, as amended.

U. S. Department of Agriculture Natural Resources Conservation Service

By: William J. Gradle **Date:** 8-20-2004
William J. Gradle, State Conservationist

Illinois State Historic Preservation Office

By: William L. Wheeler **Date:** 8-25-04
William L. Wheeler, State Historic Preservation Officer

U. S. Army Corps of Engineers – Rock Island District

By: Duane P. Gapinski **Date:** 9-20-04
Duane P. Gapinski, Colonel, U. S. Army, District Engineer

CONCUR:

The Nature Conservancy

By: Bruce W. Boyd **Date:** 10/4/04
Bruce Boyd, Illinois State Director